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Jurisdiction - Should the Jurisdictional Analysis Remain Stagnant in the Face of the Modern Expansion of International Trade Conducted within the U.S. - *HMS Aviation v. Layale Enterprises, S.A.*

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JURISDICTION — SHOULD THE JURISDICTIONAL ANALYSIS REMAIN STAGNANT IN THE FACE OF THE MODERN EXPANSION OF INTERNATIONAL TRADE CONDUCTED WITHIN THE U.S.? *HMS AVIATION V. LAYALE ENTERPRISES, S.A.*

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COURTS HAVE REFORMED their approach to exercising jurisdiction over foreign defendants in order to keep up with the increase in commerce and personal mobility in the twentieth century. Current jurisdictional analysis is based on the overarching concept of fairness to the defendant.[1] Modern courts have grounded this concept in the Fourteenth Amendment to the United States Constitution, which prohibits any state from depriving any person of "life, liberty, or property without due process of law."[2] In *HMS Aviation v. Layale Enterprises, S.A.*, the Fort Worth Court of Appeals invoked these principles in declining to exercise jurisdiction.[3] The court held that the defendant's contacts with Texas were insufficient, despite the fact that the property in dispute was physically in the state.[4] In reaching this decision, the court failed to give adequate weight to the defendant's purposeful availment of the protection of the laws of the State of Texas. The court also neglected to recognize Texas' interest in adjudicating the dispute, as well as the lack of an adequate alternative forum. This decision effectively allows a defendant to convert the property of another, bring that property into Texas, and use the laws of Texas to its advantage with-

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[1] *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); *see also* Shaffer v. Heitner, 433 U.S. 186, 206-12 (1997); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 (1984); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985).

[2] U.S. Const. amend. XIV, § 1; *Int'l Shoe*, 326 U.S. at 315-17.

[3] HMS Aviation v. Layale Enters., S.A., 149 S.W.3d 182 (Tex. App.—Fort Worth 2004, no pet.).

[4] *Id.* at 198.

out making itself, or the property, subject to the jurisdiction of Texas.

Layale Enterprises, a Panamanian Aviation Corporation, claimed it purchased a 727 ("the 727") from the Sultan of Brunei in 1987.[5] The last time that Layale had control of the plane, however, was in Amman, Jordan in 1992.[6] Then, in 1997, Layle discovered the plane under the control of HMS Aviation ("HMS") at Meacham Field in Fort Worth, Texas, and subsequently brought suit against HMS for conversion and a declaratory judgment.[7] HMS, a sole proprietorship, operates under the laws of Jordan.[8] It maintains business offices in Amman, Jordan and London, England.[9] HMS claims to have leased the 727 from HRH Prince Talal Bin Mohammed of the Hashemite Kingdom of Jordan.[10] HMS asserts that it then brought the plane to San Antonio and Fort Worth, Texas for repair and refurbishment work.[11]

Salem Bayazid ("Bayazid"), the president of HMS, had previously accompanied one of HMS's other planes, the HS-1, to San Antonio for repairs.[12] Bayazid contracted with S.I.P. Aviation in San Antonio regarding the repairs and remained there until the work was completed.[13] Shortly thereafter, he returned to San Antonio with the 727 to have similar work performed.[14] Bayazid then accompanied the plane to Fort Worth to have it refurbished by I.A.S., an aviation service provider.[15] I.A.S. required a company representative to review, approve, and discuss the work being done on the plane.[16] Because of this requirement, I.A.S. provided Bayazid office space and telephone service.[17] While in Fort Worth, Bayazid signed two refurbishment contracts concerning the plane with I.A.S., both of which contained arbitration clauses.[18] These clauses provided that the arbitration would

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[5] *Id.* at 187.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.* at 193.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.* at 194.
[17] *Id.*
[18] *Id.*

be conducted in Fort Worth and that Texas law would control "any claim or controversy arising out of the contracts."[19]

On April 10, 1997, Layale filed suit against HMS seeking damages for conversion of the plane, which allegedly occurred while the plane was in Amman, and a declaratory judgment from the court stating that Layale was the plane's true owner and entitled to possession.[20] "The trial court granted Layale a writ of sequestration" upon the plane.[21] In response, HMS entered a special appearance, alleging that the court lacked jurisdiction to decide the case.[22] The trial court ruled that it did not have personal jurisdiction over HMS but that it did have in rem jurisdiction over the plane.[23]

Both parties appealed from the judgment.[24] On August 25, 1998, the parties mutually agreed to remove the case to federal court.[25] The state court of appeals issued an order on August 28 removing the case from its docket.[26] The order provided that either party could reinstate the appeal if the case was remanded to state court.[27] The United States district court remanded the case, and over five years later, on February 17, 2004, HMS finally sought to reinstate the appeal.[28] The court of appeals reinstated the appeal on March 12, 2004, and oral argument was heard on April 6, 2004.[29]

The court addressed the issue of whether HMS's contacts with Texas were sufficient for Texas to exercise personal jurisdiction over HMS.[30] The court analyzed the question under the two-prong minimum contacts analysis the Supreme Court set out in *International Shoe Co. v. Washington.*[31] The court declined to assert specific jurisdiction since the cause of action did not arise from HMS's contacts with Texas.[32] It further declined to assert general jurisdiction, holdings that HMS's contacts with Texas

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19 *Id.*
20 *Id.* at 187.
21 *Id.*
22 *Id.*; TEX. R. CIV. P. 120a.
23 *HMS*, 149 S.W.3d at 187.
24 *Id.*
25 *Id.*
26 *Id.*
27 *Id.*
28 *Id.* at 187-88.
29 *Id.* at 188.
30 *Id.* at 194.
31 *Id.* at 196.
32 *Id.* at 192.

were not continuous and systematic.[33] Lastly, the court held that despite the plane's physical presence in Fort Worth, Texas could not exercise in rem jurisdiction over the plane.[34] The court reasoned that asserting jurisdiction over property in a forum is the same as asserting jurisdiction over the person who owns the property.[35] As a result, the court concluded that the plane's lack of significant contacts with Texas, combined with the great burden that would be placed on HMS in defending its property in Texas, precluded the assertion of in rem jurisdiction.[36]

In holding that HMS's contacts with Texas were insufficient to allow the asertion of general jurisdiction over it, the court relied on United States Supreme Court precedent that uses a more rigorous minimum contacts analysis than that which is used in analyzing assertions of specific jurisdiction.[37] It concluded that general jurisdiction is premised on the defendant consenting to jurisdiction in a forum by invoking the protection of the forum's laws.[38] The court relied heavily on the case of *Helicopteros Nacionales de Colombia, S.A. v. Hall* for the following two propositions: (1) that it takes more than the purchase of goods and services from a state, even if purchased at regular intervals, for a foreign corporation to be said to have consented to jurisdiction in the forum; and (2) that even when a foreign corporation purchases goods and services from a forum and subsequently sends its personnel into the forum for training, those contacts are too attenuated to assert general jurisdiction over the foreign corporation.[39]

Applying these propositions from *Helicopteros* to HMS's activities in Texas, the court concluded that HMS's contacts were too attenuated to say that it had consented to jurisdiction within the state.[40] The court also held that although HMS invoked the ben-

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[33] *Id.* at 196.

[34] *Id.* at 198.

[35] *Id.* at 196-97 (citing Burnham v. Superior Court of California, 495 U.S. 604, 621 (1990)).

[36] *Id.* at 198.

[37] *Id.* at 192; *see generally Helicopteros*, 466 U.S. at 408.

[38] *HMS*, 149 S.W.3d at 192 (citing Am. Type Culture Collection, Inc. v. Coleman, 83 S.W.3d 801, 808 (Tex. 2002)).

[39] *Id.* at 194-95; *Helicopteros*, 466 U.S. at 417-18 (holding that despite the fact that Helicopteros had purchased helicopters from Bell Helicopter in Fort Worth and sent its pilots to train with Bell, it had not established sufficient continuous and systematic relationships with Texas to become subject to jurisdiction in Texas).

[40] *HMS*, 149 S.W.3d at 196.

efits and protections of Texas law by entering into contracts with Texas corporations that contained forum selection clauses, HMS could not reasonably foresee that it would be involved in litigation in Texas over ownership of the 727.[41] The only litigation HMS could reasonably foresee, the court concluded, would be over the contracts it signed for the repair and refurbishment of the 727.[42]

The court also held that it could not assert in rem jurisdiction over the plane itself.[43] It relied on *Shaffer v. Heitner* for the proposition that assertion of in rem jurisdiction must be analyzed under the minimum contacts standard of personal jurisdiction.[44] The court emphasized the second prong of the jurisdictional analysis, which requires that the assertion of jurisdiction not violate traditional notions of fair play and substantial justice. Accordingly, the court held that in cases involving foreign companies, the state and federal interest would best be served by "an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State."[45]

Following this reasoning, the court concluded that defending its property in Texas would unreasonably burden HMS, and offend traditional notions of fair play and substantial justice.[46] It reached this conclusion by finding that "none of the events leading up to" the suit occurred in Texas, all of the executives of both companies lived abroad and did not regularly conduct business in Texas, the State of Texas had no interest in adjudicating the dispute, and that all of the witnesses important to a just adjudication of the claim lived abroad.[47] These considerations, combined with what the court called "almost [a] complete lack of significant contacts with the State of Texas," led the court to decline exercising jurisdiction over HMS.[48]

The court erred in finding that HMS's activities in Texas were not sufficient to subject it to the general jurisdiction of Texas courts. World-wide expansion in international commerce and personal mobility has greatly increased the amount of business

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[41] *Id.* at 195-96.
[42] *Id.* at 196.
[43] *Id.* at 198.
[44] *Id.* at 196 (citing *Shaffer*, 433 U.S. at 212).
[45] *Id.* at 197.
[46] *Id.* at 198.
[47] *Id.* at 197-98.
[48] *Id.* at 198.

that foreign corporations conduct within the United States. As a result of these expanded business activities, foreign corporations should reasonably foresee that they will become amenable to jurisdiction in foreign forums. As Justice Brennan noted:

> By broadening the type and amount of business opportunities available to participants in interstate and foreign commerce, our economy has increased the frequency with which foreign corporations actively pursue commercial transactions throughout the various States. In turn, it has become both necessary and, in my view, desirable to allow the States more leeway in bringing the activities of these nonresident corporations within the scope of their respective jurisdictions.[49]

Bringing property into a forum for the purpose of repair and refurbishment constitutes doing business within that forum. Further, HMS's business activities within Texas were not isolated to the plane in question. On at least one prior occasion, HMS brought another plane, the HS-1, into Texas for repairs. However, HMS's activities went even further than merely conducting business. HMS, by signing contracts that contained forum selection clauses that expressly provided for the control of Texas law, consented to jurisdiction in Texas. Additionally, HMS's president was present in Texas for over seven months while the plane was undergoing repairs and refurbishment.[50] During this time, he used S.I.P.'s conference room and I.A.S.'s office, which included access to telecommunication devices. The court underemphasized these facts. It is illogical to conclude that the president of a company that has offices only in London and Amman, did not conduct the business of his company while physically present in San Antonio and Fort Worth for such an extended period of time. The court also underemphasized the fact that access to the I.A.S. office space and telecommunications equipment was included in the price of the repair contact. The court should have considered this access as further evidence that HMS's president intended to conduct his company's business during the seven months he would be in Texas.

By conducting business within Texas and signing contracts containing forum selection clauses with Texas corporations, HMS purposefully availed itself of the protection of Texas law. This purposeful availment, combined with modern economic reality, makes it foreseeable that persons or entities would at-

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[49] *Helicopteros*, 466 U.S. at 422 (Brennan, J., dissenting).

[50] *HMS*, 149 S.W.3d at 193-94.

tempt to sue HMS in the State of Texas. Further, by bringing an allegedly converted plane into Texas, it is extremely foreseeable that any person or entity that claims ownership rights in the plane would seek to exercise those rights in Texas. HMS undertook this risk by bringing the plane into the forum. However, the court's holding insulated HMS from the consequences of its decision.

Another flaw in the court's analysis is in its extensive reliance on *Helicopteros.* The Supreme Court's holding in *Helicopteros* relied on the case of *Perkins v. Benguet Consolidated Mining Co.*[51] This reliance was misplaced. In his dissent in *Helicopteros,* Justice Brennan pointed out that nothing in *Perkins* suggests how much contact with a forum constitutes continuous and systematic contacts.[52] Consequently, the majority in *Helicopteros* looked to the 1923 case of *Rosenberg Bros. & Co. v. Curtis Brown Co.* for the proposition that "a company's purchases within a state, even when combined with related trips" by company officials into the forum state, are not sufficient contacts for that state to exercise general jurisdiction.[53] Again, Justice Brennan correctly pointed out that the applicability of *Rosenberg* was "dubious" given the expansion of personal jurisdiction since the Supreme Court's decision in *International Shoe.*[54] The basis for the Court's expansion of personal jurisdiction in *International Shoe* was that the existing jurisdictional analysis was inconsistent with the economic realities of the day. Since the *International Shoe* decision in 1945, both the economy and international trade have greatly expanded. Therefore, it is logical that the jurisdictional analysis should continue to expand in order to remain consistent with modern economic reality.

The court also erroneously held that Texas courts could not exercise in rem jurisdiction over the plane. To reach this conclusion, the court incorrectly relied upon *Shaffer v. Heitner.* In *Shaffer,* the court held that a defendant could not be made subject to jurisdiction simply because his unrelated property was in the forum.[55] This case is distinct from *Shaffer.* The plane *is* the subject of the litigation. It is also undisputed that the plane itself has significant contacts with the State of Texas. Further, the as-

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[51] Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952).

[52] *Helicopteros,* 466 U.S. at 421 (Brennan, J., dissenting).

[53] *Id.* (citing Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516, 518 (1923)).

[54] *Id.* (Brennan, J., dissenting).

[55] *See Shaffer,* 433 U.S. at 213.

sertion of in rem jurisdiction over the plane, which would force HMS to defend its property in Texas, would not offend traditional notions of fair play and substantial justice. The burden imposed on HMS must be balanced against Layale's interest in obtaining convenient and effective relief, and Texas' interest in furthering its social policies.[56] By dismissing the case, the court has made it almost impossible for Layale to obtain relief, as there is no adequate alternative forum in which it can assert its claim. Texas courts have defined an adequate alternative forum as a forum where "the parties will not be deprived of all remedies or treated unfairly."[57] The availability of such a forum is uncertain at best. Even if Layale asserts its claim in Jordan, it is unlikely that a Jordanian court would find Layale's claim to title superior to that of HRH Prince Talal Bin Mohammed. Also, Texas has a great interest in adjudicating this dispute. The state, in advancing its social policy, cannot allow its companies to become entangled in disputes over converted property. Further, Texas has an interest in ensuring the legitimacy of the business conducted within its borders. Layale's interest in obtaining relief and Texas' interests in advancing its social policy greatly outweigh the burden placed upon HMS in having to defend its property in Texas. Therefore, the court should have concluded that asserting jurisdiction over the plane does not offend traditional notions of fair play and substantial justice.

Given the increase in international commerce, the result in *HMS* is unsupportable. The reality of our growing and interconnected world demands that states be given more leeway in asserting jurisdiction over foreign corporations. The court, through its decision, has needlessly embraced the past while ignoring modern economic reality and sheltering a potential wrongdoer who has taken advantage of the state's protection.

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[56] Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 113 (1987).

[57] Direct Color Serv., Inc. v. Eastman Kodak Co., 929 S.W.2d 558, 564 (Tex. App.—Tyler 1996, no writ) (citing *In re* Air Crash Disaster Near New Orleans, La., 821 F.2d 1147, 1165 (5th Cir. 1989), *vacated*, 490 U.S. 1032 (1988)).